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8 **BEFORE THE**
9 **CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. AL2008-154

13 **LINSEY LEE SMITH**
505 N. Figueroa St., Apt. 528
14 Los Angeles, CA 90012

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Heather Martin (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the California Board of Occupational Therapy, Department
21 of Consumer Affairs.

22 2. On or about December 26, 2008, the California Board of Occupational Therapy
23 (Board), Department of Consumer Affairs, received an Occupational Therapist License
24 Application from Linsey Lee Smith (Respondent). On or about December 23, 2008, Linsey Lee
25 Smith certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on June 17, 2009.

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JURISDICTION

3. This Statement of Issues is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

.....

"(3)

"(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. . . ."

5. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

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1 6. Section 2570.28 states, in pertinent part:

2 "The board may deny or discipline a licensee for any of the following:

3 "(a) Unprofessional conduct, including, but not limited to, the following:

4

5 "(o) Committing any act that would be grounds for denial of a license under
6 Section 480. . . ."

7 7. Section 2570.29 states, in pertinent part:

8 "In addition to other acts constituting unprofessional conduct within the meaning of this
9 chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the
10 following:

11 "(a) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed
12 physician and surgeon, dentist, optometrist, or podiatrist, to administer to himself or herself, or
13 furnish or administer to another, any controlled substance as defined in Division 10 (commencing
14 with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
15 defined in Section 4022. . . ."

16 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

17 8. Cocaine, and any cocaine base, is a narcotic drug according to Health and Safety
18 Code section 11019(e). It is a Schedule I controlled substance, as designated in Health and Safety
19 Code section 11054(f)(1), and a Schedule II controlled substance, as designated in Health and
20 Safety Code section 11055(b)(6). It is categorized as a dangerous drug according to Business and
21 Professions Code section 4022.

22 9. Methylenedioxymethamphetamine (MDMA), having the street name of "Ecstasy," is
23 a Schedule I controlled substance as defined in Health and Safety Code sections 11054,
24 subdivision (d), and 11401 [the Analog Act].

25 **FIRST CAUSE FOR DENIAL OF APPLICATION**

26 **(Professional Misconduct)**

27 10. Respondent's application is subject to denial under section 492, on the grounds of
28 professional misconduct, in that on or about April 16, 2009, Respondent pled guilty to a felony

violation of Health and Safety Code section 11350, subdivision (a), possession of controlled substances. The circumstances are as follows:

a. On or about December 31, 2008, while working plain clothes detail at Giant Maximus 2009, a festival, Los Angeles Police Department officers observed Respondent furnish cocaine to others by repeatedly retrieving Cocaine from a baggie container using the tip of an unlit cigarette, and handing it to others who inhaled the powder into their nostrils. Incident to Respondent's arrest, the officers retrieved from Respondent's possession 2.19 grams Cocaine, and 1.05 grams Methylenedioxymethamphetamine (MDMA, Ecstasy), controlled substances and dangerous drugs.

b. On or about April 16, 2009, Respondent pled guilty to violating an interlineated felony count of Health and Safety Code section 11350(a) in the criminal proceeding entitled *The People of the State of California v. Linsey Lee Smith* (Super. Ct. Los Angeles County, 2009, No. BA351228). The Court deferred entry of the judgment and allowed Respondent to enter into a diversion program.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct - Obtain / Possess Controlled Substances)

11. Respondent's application is subject to denial under sections 2570.28, subdivision (a), and 2570.29, subdivision (a), on the grounds of unprofessional conduct, in that on or about December 31, 2008, Respondent was in possession of Cocaine and Ecstasy, without a valid prescription. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 10, subdivisions (a) and (b), inclusive, as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Substantially Related Conduct Warranting Denial of Licensure)

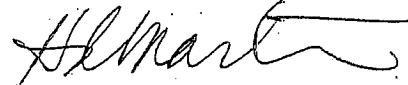
12. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)(B), and 2570.28, subdivision (o), for violating section 2570.28, subdivision (a), and 2570.29, subdivision (a), for substantially related conduct warranting denial of licensure. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 10 and 11, inclusive, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying Linsey Lee Smith's Occupational Therapist License Application; and
2. Taking such other and further action as deemed necessary and proper.

DATED: July 29, 2009


HEATHER MARTIN
Executive Officer
California Board of Occupational Therapy
Department of Consumer Affairs
State of California
Complainant

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